CF0000062671

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR:

CRIMINAL APPEAL NO. 3130 OF 1999

(15209)

APPELLANT : In Jail

HEMLAL Alias JHABLU,
S/o Sukram, Aged about 30 years,
Resident of Kalmi Dadar, Tahsil
and Police Station Pighoura,
District MAHASAMUND (M.P):

Filed on 11/11/99
by Shri D.N. Patel Advocate

Pls. A.R.

-VERSUS-

RESPONDENT: STATE OF MADHYA PRADESH,
Through P.S.Pithoura,
Distt.MAHASUMUND (M.P):

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE:

(28)

DIVISION BENCH : HON'BLE SHRI DHIRENDRA MISHRA, J
& HON'BLE SHRI SATISH AGNIHOTRI, J.

Criminal Appeal No. 3130 of 1999

Appellant — Hemlal @ Jhablu

Vs

Respondent — State of M.P.

Shri G.S.Agrawal, Sr. Advocate with Shri U. R. Khoshle, learned counsel for the appellant.

Shri Sudhir Bajpai, learned P.L. for the State.

ORAL JUDGMENT
(11/07/2006)

Per Dhirendra Mishra, J

The appellant has preferred this Criminal Appeal under Section 374(2) of the Cr.P.C. against the judgment of conviction and order of sentence dated 16th of October 1999 passed by learned Second Additional Sessions Judge, Mahasamund in S.T. No. 122/1999 whereby the learned Second Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo SI for one year for causing homicidal death of his own mother namely Chamarin Bai.

2. Case of the prosecution in brief is that on 04.01.99, Sukhram, father of the accused/appellant and husband of deceased Chamrin Bai lodged a report

in police station Pithoura to the effect that his son Hemlal used to quarrel with him and his wife and used to threaten them. On account of this, he and his wife used to sleep in others houses. On a day before thereto of the incident, at night both of them slept in the house of Sadhu and Raghu. In the morning while he was proceeding to work, he went to his house for taking *gamcha* at that time, one Bhaiya Ram Sahu of the village informed that his son has assaulted his wife by yoke (harness) and stone and killed her. Thereafter when he went near his house he found his wife dead. There were injuries over her head and body and blood was oozing out from the injuries. The incident was seen by Ghurva Bai, Uma Bai and other villagers. On the basis of this information offence under Section 302 of the IPC was registered against the accused/appellant. During investigation, inquest of Ex.P-1 was prepared in the presence of witnesses. Thereafter the dead body of deceased Chamrin Bai was sent for autopsy to Primary Health Centre, Pithoura vide Ex.P.-16 where Dr. V. K. Agrawal conducted the post mortem and submitted his report of Ex.P-22. On the basis of memorandum of the accused/appellant (Ex.P-3) the weapon of offence-yoke, brick bat and a piece of big stone was seized vide Ex.P-8, P-10 and P-12. Spot map of Ex.P-2 was also prepared. Sealed packed containing wearing apparels of the deceased were seized vide Ex.P-7. Blood stained soil, plain soil and broken bangles of the deceased were taken into possession vide Ex.P-9. Blood stained clothing of the accused/appellant was seized from him vide Ex.P-11. Blood stained lungi was also seized from the accused/appellant vide Ex.P-13. The seized articles – clothing of the deceased and accused/appellant, stone, brick bats and yoke, plain soil and blood stained soil were sent to the doctor for his opinion regarding presence of blood stains over the same and as per the opinion of the doctor, the above seized articles were sent for chemical examination to Forensic Science Laboratory vide Ex.P-9. After completing the investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Mahasamund who in turn committed the case to

the Court of Sessions Judge, Raipur and the same was received on transfer for trial by the learned Additional Sessions Judge.

3. Charge under Section 302 of the IPC was framed against the accused/appellant who abjured his guilt.

4. Prosecution in order to establish charges against the accused/appellant examined 18 witnesses in all. Thereafter statement of accused/appellant was recorded under Section 313 of the Cr.P.C. in which the appellant denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implications. However, learned Additional Sessions Judge after hearing the public prosecutor and counsel for the accused/appellant convicted and sentenced the appellant as mentioned above.

5. Homicidal death of deceased Chamrin Bai is not in dispute. Even otherwise from the statement of Dr. V. K. Agrawal (P.W.-18) and the post mortem report of Ex.P-22 in which the injuries described below were found, has opined that the cause of death of deceased Chamrin Bai is coma due to cereberal laceration and the same was homicidal, the homicidal death of the deceased is established.

i) Lacerated wound on right side forehead supra orbital region measuring 2cms. x ½ cm. x ½ cm. Blood clots present.

ii) Lacerated wound on left side supra orbital region measuring 3cms. x 2 cms. x ½ cm. Blood clots present.

iii) Lacerated wound on right side mandibular region including lower part ear pinna measuring 3cms. x 1 cms. x ½ cm. Cartilage of ear pinna lacerated placed vertically, blood clots present.

iv) Lacerated wound on scalp, occipitoparietal region, placed transversely on both sides from mid line, measuring 14 cms.. x 1 cm. x ½ cm.

v) Depressed communated fracture of underlying bone present. Blood clots present.

All the injuries were ante mortem in nature and caused by hard and blunt object.

6. The conviction is based on the eye witness account given by P.W.-2 Uma Bai and P.W.-3 Ghurva Bai who are the eye witnesses to the incident and also on the extra judicial confession made by the accused/appellant before P.W.-13 Hriday Diwaan, P.W.-14 Bisesari and P.W.-15 Girdhar.

7. Learned counsel for the accused/appellant submits that P.W.-1 Sukhram, father of the appellant and husband of the deceased had not seen the incident as is evident from the report of Ex.P-14. In his Court statement he has claimed to have seen the incident and has described the whole incident minutely and on this account he ought to have been disbelieved. He further submits that the statement of P.W.-2 Uma Bai does not inspire confidence as she had not stated as to from how much distance she saw the incident or on what part of the body the injury was inflicted. Similarly the statement of P.W.-3 Ghurva Bai is also not reliable as she has claimed that the injuries were caused by the brick bat and after causing the injury he had dragged the deceased up to his home and as such there are inconsistencies in their statements. He further submits that the prosecution has deliberately exaggerated and introduced a story that the injuries were caused by heavy stone weighing 30 kgs. However the injuries described by the doctor performing autopsy do not reflect that the injuries present over the body of the deceased could be caused by such a heavy stone. He further submits that yoke is alleged to have been used for

assaulting the deceased and the same was found in three parts but none of the witnesses have stated that accused/appellant, while assaulting the deceased, the weapon of offence – yoke, broke into three parts. In the alternative it is argued that even if it is held that the appellant was responsible for the crime in question, the prosecution has failed to establish the motive of the accused/appellant and the offence if any does not travel beyond Section 304-I or 304-II of the IPC.

8. On the other hand, learned counsel for the State supports the judgment of the trial Court.

9. We heave heard learned counsel for the parties. We have perused the records. In the instant case, the son has killed his own mother and the conviction is based on the statements of P.W.-2 Uma Bai and P.W.-3 Ghurva Bai who are the eyewitness of the incident. P.W.-2 Uma Bai who is an independent witness has stated that on the date of incident when she was returning with hay she saw the accused/appellant assaulting his own mother Chamrin Bai with yoke and after witnessing this she proceeded and narrated the incident to Sarpanch Bhaiya Lal that the accused is assaulting his mother. In the cross examination she has stated that she saw the appellant assaulting two-three times to the deceased and the assaults were made over her head.

10. P.W.-3 Ghurva Bai who is also an independent witness and villager has stated that on that day (i.e. on the date of incident) when Chamrin Bai died she was present in the village. The incident is of the morning. She was returning from thrashing field when she saw accused/appellant assaulting his mother by brick bats. After receiving the brick injuries Chamrin Bai fell on the ground and thereafter the accused/appellant dragged her up to the gate of his house. This witness, in the cross examination has stuck to her statement and the defence has not been able to elicit anything in the cross

examination of these witnesses which makes the evidence unreliable or untrustworthy.

11. P.W.-1 Sukhram who is none else than father of the accused/appellant and husband of the deceased has promptly lodged the FIR (Ex.P-14) and in which the name of the accused/appellant appears as assailant, has categorically stated that on the date of incident he slept in the house of Shobha Ram where as his wife slept in the house of Uma Bai (P.W.-2).as accused/appellant Hemlal used to threaten that he is going to kill them and out of this fear they were not sleeping in their house and were sleeping elsewhere. He had also claimed to have seen the incident in paragraph three and four of his statement. Even if we consider that this witness has made improvement regarding witnessing the incident personally nevertheless the statement of this witness establishes motive on the part of the accused/appellant for causing death of his own mother as this witness has stated that out of fear of his son they were forced to sleep outside and he was annoyed because they could not fulfill the demand of the accused/appellant for second marriage.

12. Apart from the statement of these witnesses we also find that the accused has confessed his guilt before P.W.-13 Hriday Diwaan, P.W.-14 Bisesari and P.W.-15 Girdhar who have stated that Hemlal was standing in his kitchen garden and on enquiry he had confessed of having caused the death of his mother. He has further confessed that he assaulted his mother firstly by brick bats and thereafter when she fell on the ground he assaulted with the yoke and stone.

13. Similar is the statement of P.W.-14 Bisesari and P.W.-15 Girdhar. Thus, from the evidence of above witnesses we are of the considered opinion that the prosecution has established involvement of the appellant in the crime in question.

14. The next argument advanced by the counsel for the accused/appellant is that the offence if any, does not travel beyond Section 304-I or 304-II of the IPC is concerned, from perusal of the statement of P.W.-1 Sukhram we find that the appellant was in fact a terror in his own family and out of his fear, his father and mother were forced to sleep outside. When the appellant got an opportunity to kill his mother he brutally assaulted her with the help of brick bats, yoke and stone and looking to the nature of injuries present over the vital part – head, of the deceased and also looking to the weapon of offence by which the appellant assaulted the deceased over the vital parts and further looking to the fact that the deceased was apprehensive of such assault, intention of the appellant causing death of his own mother can be inferred.

15. On the basis of the aforesaid discussion we are of the considered opinion that the Court below has not committed any illegality or infirmity in holding the accused/appellant guilty under Section 302 of the IPC and sentencing him to undergo imprisonment for life.

16. In the result, the appeal being devoid of merits is liable to be dismissed and is hereby dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

Sd/-
Satish K. Agnihotri
Judge